

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GUSTAVO VILLANUEVA,) Case No.: C-07-5721 PVT
Plaintiff,)
v.)
CONDOLEEZA RICE, AS SECRETARY)
OF THE UNITED STATES)
DEPARTMENT OF STATE ET AL.,)
Defendants.)
**ORDER DENYING WITHOUT
PREJUDICE REQUEST FOR
APPOINTMENT OF COUNSEL**

A court may “request an attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1).¹ However, the statute does not authorize courts to *require* counsel to represent litigants proceeding *in forma pauperis*, but only to *request* such representation on a *pro bono* basis. *Mallard v. United States District Court*, 490 U.S. 296, 304-07 (1989). The appointment of counsel pursuant to section 1915(e)(1) is limited to cases presenting exceptional circumstances. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004); *see also Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Aldabe v. Aldabe*, 616 F.2d

¹ The holding of this court is limited to the facts and the particular circumstances underlying the present motion.

1 1089, 1093 (9th Cir. 1980).² A finding of exceptional circumstances requires an evaluation of
2 both the likelihood of success on the merits and the ability of the petitioner to articulate his
3 claims pro se in light of the complexity of the legal issues involved. *Wilborn*, 789 F.2d at 133.

4 In this case, Plaintiff has not requested to proceed *in forma pauperis*. Indeed, his income
5 level of almost \$100,000 per year precludes him from obtaining that status. Section 1915(e)
6 applies only to litigants proceeding *in forma pauperis*. Moreover, Plaintiff's extensive complaint
7 indicates that he is capable of sufficiently articulating his claims. Accordingly, the request for
8 appointment of counsel under 28 U.S.C. § 1915(e)(1) is DENIED.

9 Plaintiff also moves for appointment of counsel under 42 U.S.C. § 1981 (a), which
10 provides:

11 All persons within the jurisdiction of the United States shall have the same right
12 in every State and Territory to make and enforce contracts, to sue, be parties, give
13 evidence, and to the full and equal benefit of all laws and proceedings for the
14 security of persons and property as is enjoyed by white citizens, and shall be
subject to like punishment, pains, penalties, taxes, licenses, and exactions of every
kind, and to no other.

15 42 U.S.C. § 1981(a). Plaintiff does not appear to assert a claim under Section 1981(a).
16 Additionally, Section 1981(a) does not appear to provide for appointment of counsel.

17 Title VII provides for appointment of counsel: "Upon application by the complainant
18 and in such circumstances as the court may deem just, the court may appoint an attorney for such
19 complainant and may authorize the commencement of the action without the payment of fees,
20 costs or security." 42 U.S.C. § 2000e-5(f)(1). Plaintiff, however, has not stated a claim under
21 Title VII and the Court cannot appoint counsel under Title VII absent a valid claim.

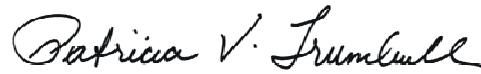
22 Finally, even if the Court evaluated Plaintiff's claims under Title VII's standards for
23 appointment of counsel, Plaintiff would still not be entitled to the appointment of counsel.

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26 ¹ At the time the Ninth Circuit decided *Wilborn* and *Aldabe*, the provision addressing
27 appointment of counsel under the federal IFP statute was section 1915(d). The Prison Litigation
28 Reform Act, Pub. L. No. 104-135, 110 Stat. 1321 (1996) (hereinafter "PLRA"), subsequently
redesignated section 1915(d) as section 1915(e). There is no indication in the case law that the
PLRA modified the "exceptional circumstances" standard.

1 When determining whether to appoint counsel under section 2000e-5(f)(1), a court is required to
2 assess three factors: (1) the plaintiff's financial resources; (2) the plaintiff's efforts to secure
3 counsel; and (3) the meritousness of plaintiff's claim. *Bradshaw v. Zoological Society of San*
4 *Diego*, 662 F.2d 1301, 1318 (9th Cir. 1981). Here, Plaintiff has demonstrated neither that he
5 lacks resources to secure counsel nor any efforts to secure counsel. Accordingly, even if the
6 court were to apply the standards of appointment under Title VII, Plaintiff would not qualify.

7 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff's Motion for
8 Appointment of Counsel is Denied.

9 Dated: December 6, 2007



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11 PATRICIA V. TRUMBULL
United States Magistrate Judge

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1 copies mailed on 12/7/07 to:

2 Plaintiff (Pro Se)

3 Gustavo T Villanueva
1301 Cougar Creek Drive
4 Patterson, CA 95363

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6 /s/ Carolyn Frantz for
7 CORINNE LEW
Courtroom Deputy

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